

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 14-1192V

Filed: November 30, 2015

Unpublished

CHARLES K. RICE,

*

*

Petitioner,

*

Damages Decision Based on Proffer;

*

Influenza ("Flu") Vaccine; Shoulder

*

Injury Related to Vaccine Administration

*

("SIRVA"); Special Processing Unit

*

("SPU")

*

Respondent.

*

*

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*Patrick Joseph Austin, Esq., Shapiro, Lewis, et al., Virginia Beach, VA, for petitioner.
Michael Patrick Milmoe, Esq., U.S. Department of Justice, Washington, DC for
respondent.*

DECISION AWARDING DAMAGES¹

Dorsey, Chief Special Master:

On December 11, 2014, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² [the "Vaccine Act" or "Program"]. Petitioner alleges that he suffered a shoulder injury caused by the influenza vaccine he received on November 8, 2012. Petition, ¶¶ 11-12. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On June 16, 2015, a ruling on entitlement was issued, finding petitioner entitled to compensation for his Shoulder Injury Related to Vaccine Administration ["SIRVA"]. On November 27, 2015, respondent filed a proffer on award of compensation ["Proffer"] indicating petitioner should be awarded \$45,000.00. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. Based on the

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$45,000.00 in the form of a check payable to petitioner, Charles K. Rice.** This amount represents compensation for all damages that would be available under § 300aa-15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

CHARLES K. RICE,)	
)	
Petitioner,)	No. 14-1192V
)	Chief Special Master Dorsey
v.)	ECF
)	
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	
)	

RESPONDENT'S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On June 15, 2015, respondent filed a Rule 4(c) Report conceding that petitioner was entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”). Respondent proffers that, based on the evidence of record, petitioner should be awarded \$45,000.00. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a)(1); 15(a)(3)(A); and 15(a)(4). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below, and requests that the special master's decision and the Court's judgment award the following:¹

A. A lump sum payment of \$45,000.00 in the form of a check payable to petitioner, Charles K. Rice. This amount accounts for all elements of compensation under 42 U.S.C.

¹ Should petitioner die prior to entry of judgment, respondent reserves the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

§ 300aa-15(a) to which petitioner would be entitled.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

RUPA BHATTACHARYYA
Director
Torts Branch, Civil Division

VINCENT J. MATANOSKI
Deputy Director
Torts Branch, Civil Division

GLENN A. MACLEOD
Senior Trial Counsel
Torts Branch, Civil Division

/s/ Michael P. Milmoe
MICHAEL P. MILMOE
Senior Trial Counsel
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Phone: (202) 616-4125
Fax: (202) 616-4310

Dated: November 27, 2015